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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,732	10/29/2003	Cheng-Liang Hou	0063-115001	2651
57346 7590 01/07/2010 BRAKE HUGHES BELLERMANN LLP c/o CPA Global P.O. Box 52050 Minneapolis, MN 55402				
			EXAMINER JAIN, RAJ K	
			ART UNIT 2472	PAPER NUMBER
			NOTIFICATION DATE 01/07/2010	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary**Application No.**

10/694,732

Applicant(s)

HOU, CHENG-LIANG

Examiner

RAJ JAIN

Art Unit

2472

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-12, 14-19, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-12, 14-19, 21 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 8-12 and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chiussi et al (USP 6,693,913 B1) in view of Marin et al.

Re claim(s) 1, 8, 9 and 16, Chiussi discloses a method and apparatus, comprising:

storing a first plurality of data transmission rates in a register (Figs. 1-3, registers 12, 18), wherein each of the first plurality of data transmission rates are spaced from each other by a first incremental value (basic rate r1 is the first incremental value as a discrete data rate, see also claim 1 lines 20-24);

storing a second plurality of data transmission rates in a register (Figs 1 & 2 represent a second data transmission rate in registers 12 and 18), wherein each of the second plurality of data transmission rates are spaced from each other by a second incremental value (basic rate r2 is the second incremental value);

receiving a request to transmit data over a port of a switch at a requested (claim 1, basic data rate is matched per the request of new connection establishment) transmission rates selecting one of the first plurality of data transmission rates or one of the second data transmission rates at which to transmit data over the port, wherein the selected transmission rate is based on the requested transmission rate (claim 1 lines 35-40; 62-67); and

transmitting data through the port using the selected data transmission rate (col 9 lines 1-9).

Chiussi fails to explicitly disclose whereby the second data rate is greater than the first data rate.

Marin discloses whereby the second data rate is greater than the first data rate (Fig. 5, col 11 lines 14-20; 30-45). The allocation of variable data rates amongst different data types (i.e. Audio, video, data, et) allows for optimum bandwidth efficiency with minimum data loss.

Thus it would have been obvious at the time the invention was made to incorporate the teachings of Marin within Chiussi so as to improve overall network efficiency.

Re claim(s) 2, 10 and 17, Chiussi fails to explicitly disclose whereby the second data rates are greater than the first data rates.

Marin discloses whereby the second data rates are greater than the first data rates (Fig. 5, col 11 lines 14-20; 30-45). The allocation of variable data rates amongst different data types (i.e. Audio, video, data, et) allows for optimum bandwidth efficiency with minimum data loss.

Thus it would have been obvious at the time the invention was made to incorporate the teachings of Marin within Chiussi so as to improve overall network efficiency.

Re claim(s) 3, 11 and 18 Chiussi storing a third plurality of data transmission rates (Fig. 1, a third transmission stream amongst the plurality of streams stores a third transmission rate r_3), wherein each of the third plurality of data transmission rates are spaced from each other by a third incremental value (third incremental value is basic rate r_3); selecting one of the first plurality of data transmission rates, one of the second data transmission rates, or one of the third plurality of data transmission rates at which to transmit data over the port, wherein the selected transmission rate is based on the requested transmission rate (claim 1 lines 35-40; 62-67).

Chiussi fails to disclose whereby a third data rate is greater than second data rate.

Marin discloses whereby the third data rate is greater than the second data rate (Figs. 5 & 6, col 11 lines 14-20; 30-45, rate table Fig. 6 shows different data rates R_1 , R_2 , etc, col 10 lines 55-61). The allocation of variable data rates amongst different data

types (i.e. Audio, video, data, et) allows for optimum bandwidth efficiency with minimum data loss.

Thus it would have been obvious at the time the invention was made to incorporate the teachings of Marin within Chiussi so as to improve overall network efficiency.

Re claim(s) 4, 12 and 19, Chiussi fails to explicitly disclose whereby the third data rates are greater than the second data rates.

Marin discloses whereby the third data rates are greater than the second data rates (Figs. 5 & 6, col 10 lines 55-61). The allocation of variable data rates amongst different data types (i.e. Audio, video, data, et) allows for optimum bandwidth efficiency with minimum data loss.

Thus it would have been obvious at the time the invention was made to incorporate the teachings of Marin within Chiussi so as to improve overall network efficiency.

Claims 6, 7, 15, 15, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chiussi et al (USP 6,693,913 B1) in view of Marin et al and further in view of Leung (US 6597693 B1).

Chiussi and Marin fail to disclose variable data rates.

Leung discloses variable data rates as appropriate (Fig. 1; col 2 lines 6-32; col 3 lines 28-67).

Leung illustrates a common architecture for all of the ports within a network switch or router or any other applicable transmission device that is scalable over a wide range of data rates as necessary to accommodate different data rate requirements and optimizing the bandwidth capacity within a network.

Thus it would have been obvious at the time the invention was made to incorporate the teachings of Leung within Chiussi so as to improve overall network bandwidth efficiency by allowing for scalable data rates for different data sources (audio, video, etc.).

Response to Arguments

Applicant's arguments filed October 14, 2009 have been fully considered but they are not persuasive.

First off, Examiner withdraws the **35 USC § 101** rejection to claims 1-4, 6 and 7 and Objections to claims 6, 14 and 21 in light of applicants amendments/clarifications.

With respect to **35 USC § 103** rejection to claim(s) 1-4, 8-12 and 16-19, Applicant contends "Chiussi does not disclose a "storing a first plurality of data transmission rates in a register, wherein each of the first plurality of data transmission rates are spaced from each other by a first incremental value" and "storing a second plurality of data transmission rates in a register, wherein each of the second plurality of data transmission rates are spaced from each other by a second incremental value greater than the first incremental value."

Examiner respectfully disagrees, Chiussi clearly and explicitly discloses two or more registers (Figs. 1-3, registers 12, 18), wherein each of the first plurality of data transmission rates are spaced from each other by a first incremental value (basic rate r1 is the first incremental value as a discrete data rate, see also claim 1 lines 20-24. Examiner fails to understand Applicants contention of how basic rates of say r1 and r2 is not the same as first and second transmission rates, Examiner asserts that any two or more differing rates in this case r1 and r2 are two separate and distinct transmission rates and one skilled in the art would readily agree that basic rate(s) are transmission rates regardless of how small or large the transmission rate may be. Further a basic rate is interpreted as the "incremental" value since all other data rates would be multiple increments of the basic rate.

Applicant further contends "The Office's error is further illustrated by the statement in the Office action that "Chiussi fails to explicitly disclose whereby the second data rate is greater than the first data rate. Marin discloses whereby the second data rate is greater than the first data rate," because the claims state that it is the "second incremental value [that is] greater than the first incremental value," not that the second transmission rates are greater than the first transmission rates."

Examiner disagrees, first off there is no error, Examiner clearly understands within the context the nature of "transmission" vs. "incremental value". Secondly, Examiner simply uses two separate transmission data rates to interpret two separate incremental values for transmission of the subject data for which is a secondary (Marin) reference is invoked. Marin discloses whereby the second data rate (or incremental rate) is greater than the first data rate (incremental rate) (Fig. 5, col 11 lines 14-20; 30-45). The allocation of variable data rates amongst different data types (i.e. Audio, video, data, et) allows for optimum bandwidth efficiency with minimum data loss.

Thus based on the foregoing, Examiner asserts the combination of Chiussi in view of Marin does disclose the limitation of claims 1-4, 8-12 and 16-19, and therefore the rejection to claims 1-4, 8-12 and 16-19 is sustained.

Furthermore, the rejection to claims 6, 7, 15, 15, 21 and 22 is sustained based on limitations being met either alone or in combination of appropriate cited art(s).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAJ JAIN whose telephone number is (571)272-3145. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Trost can be reached on 571-272-7872. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Raj K. Jain/

Examiner, Art Unit 2472